

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

## CHRISTOPHER BRIAN HORTON.

Petitioner,

V.

M. ELIOT SPEARMAN,

## Respondent.

Case No. 19-cv-02954-WHO (PR)

## **ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS**

Dkt. Nos. 35 and 37

## INTRODUCTION

Petitioner Christopher Brian Horton seeks federal habeas relief from his state convictions for corporal injury to a spouse, spousal rape, forcible oral copulation, and assault with intent to commit a felony. None of his claims has merit. The petition is DENIED.

## BACKGROUND

In 2015, Horton was convicted by a Monterey County Superior Court jury of infliction of corporal injury upon a spouse, spousal rape, forcible oral copulation spousal rape, and assault with intent to commit a felony. Additionally, the jury found true the allegations that Horton had a prior conviction for rape and was a habitual sex offender. A sentence of 156 years was imposed. (Ans., State Appellate Decision, Dkt. No. 22-16 at 122-123.)<sup>1</sup>

The victim of these crimes was Horton's wife, Jane Doe 1 (Jane), who testified at

<sup>1</sup> *People v. Horton*, No. H042319, 2017 WL 5167382, at \*1 (Cal. Ct. App. Nov. 8, 2017).

1 trial.<sup>2</sup> She had met Horton in person in August 2010. (*Id.* at 124.) The two talked over the  
2 phone a few times after that, and he invited her over to dinner at his house. (*Id.*) During  
3 this dinner, Horton told Jane he was married. (*Id.*) She told him she did not want to see  
4 him anymore. (*Id.*)

5 They next met in March 2011 when Horton came to her apartment and told her his  
6 wife had died. (*Id.*) The pair began a relationship soon thereafter. (*Id.*) In May 2011,  
7 Jane allowed Horton to move in with her, after he told her he “was lonely and that his  
8 daughters and mother-in-law had abandoned him.” (*Id.*) The relationship became sexual,  
9 and in July 2011, Horton asked her to marry him. (*Id.* at 124-125.) She thought marriage  
10 inappropriate so soon after his wife’s death, and declined. (*Id.* at 125.) They eventually  
11 married on November 11, 2011, and had a reception on November 19. (*Id.*)

12 Horton’s behavior and demeanor changed immediately after the wedding reception.  
13 He cancelled the couple’s honeymoon and scoffed at Jane’s invitation to have sex,  
14 declaring “it would only happen when he wanted to, not whenever.” (*Id.*) In the days  
15 after, “he was angry all the time, and would frequently curse, using words like ‘fuckin’  
16 bitches . . . and putas [Spanish for whores],’ words he had not used before they had  
17 married.” (*Id.*)

18 Physical and sexual abuse of Jane followed:

19 On the evening of November 21, Jane was in the bedroom on the phone with  
20 her daughter. [Horton] came in, asked with whom she was speaking, and  
21 then ordered Jane to hang up and not to talk to anyone on the phone. Jane  
22 continued the call. She then went into the kitchen for a glass of milk.  
23 [Horton] came in from the living room and told her she couldn’t get anything  
24 and ordered her to put down the milk. As Jane returned to the bedroom,  
25 [Horton] struck her with ‘a very strong blow to the head,’ and she dropped  
26 the phone. She felt dizzy and ‘[e]verything went dark.’ [Horton] yelled at  
27 her, called her puta and said, ‘Why didn’t you listen to me? I told you to  
28 hang up.’ After Jane asked why he had struck her, [Horton] kept yelling at  
her and told her she had to do as he ordered. He shook her by the shoulder.  
After he stopped, Jane picked up the phone. In response to her daughter

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<sup>2</sup> Jane, whose first language is Spanish, testified through an interpreter. (Ans., State Appellate Opinion, Dkt. No. 22-16 at 124.)

1 asking what was wrong, Jane said she had just dropped the phone; she was  
2 embarrassed to tell her daughter that [Horton] had struck her. After telling  
3 [Horton] not to hit her, he said, 'Shut up, whore, puta. You have to do what  
4 I say.' She sustained a bump on the back of her head as a result of [Horton]'s  
5 striking her. It persisted for approximately one week.

6 The next evening (November 22), Jane was lying down in the bedroom  
7 resting because her head hurt. [Horton] came in, grabbed his penis, and said,  
8 'That's what you wanted.' She told him she didn't feel well and that her  
9 head hurt. [Horton] grabbed her by the hair, got on the bed, spread her legs,  
10 and orally copulated and digitally penetrated her. Jane, who was crying, told  
11 him to stop, that he was hurting her, and her head hurt from him hitting her  
12 the previous day. [Horton] turned her, insulted her, called her a whore, and  
13 put his penis in her vagina, pulling her hair and slapping her in the face while  
14 doing so. He also grabbed her by the neck and spat on her. She repeatedly  
15 asked him to stop and told him he was hurting her. He stopped after  
16 ejaculating inside of her.

17 On another occasion, [Horton] took Jane's phone and her 'papers' away so  
18 that she was unable to communicate with her family in Mexico. She saw her  
19 friend, Jasmin, on the street as Jane was walking to buy a phone after  
20 [Horton] had taken her phone away from her. [Horton] also forbade Jane  
21 from going to school and took her car keys. [Horton] instructed her to stay  
22 inside the house and threatened to report her to immigration. She went to  
23 school anyway on foot.

24 On the morning of December 23, as they were getting ready to clean homes,  
25 [Horton] was very upset by someone having left a drawing of him outside  
26 the door. He swore and said, 'All women are whores.' After Jane asked him  
27 to stop, he said, 'You, too, bitch. Shut up.' When they returned home that  
28 evening, [Horton] was still upset and was yelling. At approximately 9:00  
p.m., while Jane was in the bedroom on the phone with her daughter,  
[Horton] came in from the living room and asked with whom she was  
speaking. After she told him, [Horton] got on the bed and began orally  
copulating her. After she moved him away and told him to stop because she  
was talking to her daughter, [Horton] said, 'Tell your daughter I licked your  
pussy.' Jane told her daughter she would call her back and hung up. She  
then said, 'Brian, don't treat me this way.' [Horton] responded, 'Shut up,  
whore, bitch. I will do whatever I want to do.'

29 Approximately one hour later, Jane was talking on the phone with Jasmin.  
30 [Horton] came into the bedroom and again asked her with whom she was  
31 speaking. After she told him, [Horton] got on the bed and spread Jane's legs.  
32 She told him to stop, but he did not, and he orally copulated her. She again  
33 asked him to stop. [Horton] instead made 'really ugly sounds' and said, 'Tell

1 Jasmin that I'm licking your pussy.' Jasmin asked Jane what was going on,  
2 and she responded that she would call her back. After she hung up, [Horton]  
3 kept calling Jane a whore, and said, 'I want to fuck, bitch.' [Horton] laughed  
4 and left the room.

5 Jane then lay on the bed and chatted on Facebook. [Horton] came back and  
6 got into bed. Jane showed him a picture of his daughter she had found. (She  
7 had conducted the search because [Horton] had told her previously that 'he  
8 wanted to look for his daughters, because they didn't want to see him.')  
[Horton] became very upset and started yelling at her, again calling her a  
whore. He got out of bed, grabbed Jane by the neck, raised his hand to hit  
her, and called her a whore. He then pulled her by the arm out of bed and  
started shaking her. He pushed her into the living room.

9 Jane watched television ('the Animal Planet channel') in the living room.  
10 After a while, [Horton] came out of the bedroom, threw a Bible at her, and  
11 told her, 'Whore, read.' She returned it to her bedside table and asked  
12 [Horton] not to throw it. In a later encounter, [Horton] came back into the  
13 living room, pulled on his penis, and told Jane, 'This is what you wanted.'  
14 Jane asked him not to bother her and said she wanted to rest in the living  
15 room. [Horton] pulled Jane hard towards him, took off her panties, and again  
16 called her a whore and a bitch. He began orally copulating her; she told him  
17 to stop, tried to close her legs, and tried to push him away. He used more  
18 force to open her legs again twice more. Because he refused to stop, Jane  
19 kicked [Horton] in the stomach, and he fell back on the floor. He then got  
20 up and grabbed Jane by the hair and hit her in the face. She asked him to  
21 stop. He spat in her face and tried to force her to orally copulate him. She  
22 turned her face and told him to stop. [Horton] threw Jane on the floor and  
continued hitting her in the face and stomach, again calling her a bitch and a  
whore. Jane struck him in the groin, which caused him to stop momentarily.  
Jane reached for her phone and tried to get up. [Horton] grabbed her hand.  
Jane said she wanted to go into the bedroom to rest; [Horton] said, 'No, bitch.  
You're going to call the police.' Jane went into the bathroom, locked the  
door, and dialed 911. [Horton] knocked on the door and asked her to open  
it; she refused. He begged her not to call the police.

23 Jane told the 911 operator that her husband had struck her in the face and she  
24 felt embarrassed. After a Spanish interpreter was brought into the  
25 conversation, Jane repeated that her husband had struck her in the face, and  
26 that he had grabbed her by the neck and pulled her hair. She said that '[he]  
wanted to abuse with me [sic].'

27 Two or three police officers responded to the apartment. After being  
28 interviewed by them, Jane went to Natividad Medical Center (Natividad).  
She had significant pain in her left eye that was very light-sensitive. Both

1 sides of her face were swollen, and she had pain in her stomach. She went  
2 for a follow-up visit because of her injured eye.

2 (*Id.* at 125-128.)

3 Horton's attempts to overturn his convictions in state court were unsuccessful.  
4 (Pet., Dkt. No. 1 at 3-4.) This federal habeas petition followed.

5 As grounds for federal habeas relief, Horton claims: (i) the trial court erred by  
6 denying his request for self-representation in violation of *Faretta v. California*, 429 U.S.  
7 806 (1975); (ii) the trial court erred in admitting sexual propensity evidence; (iii) the trial  
8 court violated Horton's right to confrontation and due process by stopping the cross-  
9 examination of Jane; (iv) the trial court erred by preventing discovery of Jane's prior report  
10 of rape and employment records; (v) trial counsel was ineffective for failing to impeach  
11 Jane and her friend with the friend's prior inconsistent statements; (vi) trial counsel was  
12 ineffective for failing to object to evidence that Horton had stalked and harassed Jane Doe  
13 2; and (vii) the cumulative error of all these claims violated his rights.

#### 14 **STANDARD OF REVIEW**

15 Under the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), this  
16 Court may entertain a petition for writ of habeas corpus "in behalf of a person in custody  
17 pursuant to the judgment of a State court only on the ground that he is in custody in  
18 violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).  
19 The petition may not be granted with respect to any claim that was adjudicated on the  
20 merits in state court unless the state court's adjudication of the claim: "(1) resulted in a  
21 decision that was contrary to, or involved an unreasonable application of, clearly  
22 established Federal law, as determined by the Supreme Court of the United States; or  
23 (2) resulted in a decision that was based on an unreasonable determination of the facts in  
24 light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d).

25 "Under the 'contrary to' clause, a federal habeas court may grant the writ if the state  
26 court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question  
27 of law or if the state court decides a case differently than [the] Court has on a set of  
28

1 materially indistinguishable facts.” *Williams (Terry) v. Taylor*, 529 U.S. 362, 412-13  
2 (2000).

3 “Under the ‘unreasonable application’ clause, a federal habeas court may grant the  
4 writ if the state court identifies the correct governing legal principle from [the] Court’s  
5 decisions but unreasonably applies that principle to the facts of the prisoner’s case.” *Id.* at  
6 413. “[A] federal habeas court may not issue the writ simply because that court concludes  
7 in its independent judgment that the relevant state court decision applied clearly  
8 established federal law erroneously or incorrectly. Rather, that application must also be  
9 unreasonable.” *Id.* at 411. A federal habeas court making the “unreasonable application”  
10 inquiry should ask whether the state court’s application of clearly established federal law  
11 was “objectively unreasonable.” *Id.* at 409.

## 12 DISCUSSION

### 13 i. Right to Self-Representation

14 Horton claims that the trial court unconstitutionally denied his right to self-  
15 representation. (Pet., Dkt. No. 1 at 5.) The relevant facts are as follows. Horton brought  
16 10 motions to change counsel during the three years preceding trial, from 2012 to 2015.  
17 (Ans., State Appellate Opinion, Dkt. No. 22-16 at 140.) In 2015, after the court denied  
18 another motion to change counsel, Horton asked to represent himself. (*Id.* at 141.) The  
19 trial court advised Horton that he should consider the matter carefully, gave him a  
20 questionnaire and a waiver advisement to review and complete, and scheduled a *Faretta*  
21 hearing in two weeks on the request. (*Id.* at 141-142.) “In doing so, the court stated that it  
22 was giving [Horton] ‘two weeks to think about this.’” (*Id.* at 142.)

23 At the January 2015 *Faretta* hearing, Horton gave the court the signed waiver form  
24 (with advisements) and a waiver of the right to counsel. (*Id.*) The form stated that “no  
25 continuance will be allowed without a showing of good cause, and that such request made  
26 just before trial will most likely be denied.” (*Id.*) Yet Horton said at least seven times at  
27 the hearing that he would not be ready by the trial date of March 9, 2015. (*Id.*) He cited  
28 his need to obtain his files from his attorney, determine what his attorneys had done up to

1 that point, meet with an investigator one of his prior attorneys had consulted, and prepare  
2 for trial. (*Id.*) He also stated that he did not have the right glasses for reading, there was  
3 no law library he could use, and he did not think he would have adequate funds for  
4 investigations. (*Id.*)

5 The *Farettta* motion was denied. (*Id.*) The trial court said that it would not grant  
6 the request unless Horton was ready to go to trial on March 9. (*Id.*) “We have had this  
7 matter set for trial for quite a significant period of time. [¶] And your request to represent  
8 yourself at this point is one where you are saying that it would require you to delay this  
9 trial. And that is not something that the court or the cases allow.” (*Id.*) While  
10 acknowledging Horton had a right to represent himself, the trial judge said that “that right  
11 has to be weighed against other . . . things that relate to the process and to the  
12 proceedings.” (*Id.* at 143.) If Horton had made the motion and “had stuck by this motion  
13 several months ago, prior to us setting this trial date, we would be in a completely different  
14 situation than we are today.” (*Id.*) The trial judge brought up the no continuance language  
15 in the signed waiver and stated “serving as your own attorney is not good cause” to grant a  
16 continuance. (*Id.*)

17 Furthermore, the trial court was concerned that “you are making this at a late date  
18 . . . And honestly, my other concern is that you are intending to use this to delay this trial  
19 unnecessarily. That you are using this to manipulate the process of the court.” (*Id.*) The  
20 court concluded: “So based on that [Horton’s statement he is not prepared to proceed to  
21 trial on the date set], if you cannot move forward at that time in representing yourself, then  
22 the court will respectfully deny your request to represent yourself.” (*Id.*)

23 The state appellate court rejected Horton’s *Farettta* claim. “[T]here was ample  
24 evidence from which the trial court reasonably concluded that [Horton] made the *Farettta*  
25 request for purposes of delay and to obstruct proceedings.” (*Id.* at 147.) The appellate  
26 court noted: proceedings had been pending for over three years; Horton’s “dissatisfaction”  
27 with the attorneys assigned to him; his “repetitive and numerous” motions to change  
28 counsel; his failure to make an earlier *Farettta* request; and his repeated assertions that he

1 could not be ready for the trial date. (*Id.*)

2 The appellate court emphasized that given Horton's "constant dissatisfaction with  
3 appointed counsel, [Horton] could have made a request to represent himself long before he  
4 did so on January 8, 2015." (*Id.* at 148.) Also, the record indicated that he "contemplated  
5 making a *Farett*a request long before he actually did so." (*Id.*) Horton admitted at the  
6 *Farett*a hearing that in August 2014, he told another attorney from the Alternate  
7 Defender's Office that because he was dissatisfied with his current attorney, he "was  
8 strongly considering taking [his] own case." (*Id.*)

9 The appellate court underscored that Horton repeatedly said he would not be ready  
10 for trial by March 9. (*Id.*) The trial court asked Horton many times about his readiness  
11 and repeated that "if his *Farett*a request was tied to the expectation of a trial continuance,  
12 the request would be denied." (*Id.*) "And although [Horton] was given ample opportunity  
13 at the hearing, he failed to give any indication as to when, if not on March 9, 2015, he  
14 would in fact be ready for trial as a self-represented defendant." (*Id.*)

15 "A criminal defendant has a Sixth Amendment right to self-representation at trial.  
16 *Farett*a v. California, 422 U.S. 806, 832 (1975). The right is not absolute, however.  
17 *Indiana v. Edwards*, 554 U.S. 164, 171 (2008). The request for self-representation must be  
18 "unequivocal, timely, and not for purposes of delay." *Stenson v. Lambert*, 504 F.3d 873,  
19 882 (9th Cir. 2007). A request to represent oneself "need not be granted if it is intended  
20 merely as a tactic for delay." *United States v. Flewitt*, 874 F.2d 873, 674 (9th Cir. 1989).  
21 "A court may consider events preceding a motion for self-representation to determine  
22 whether the request is made in good faith or merely for delay." *United States v. George*,  
23 56 F.3d 1078, 1084 (9th Cir. 1995). In *George*, the court held the trial court's "findings  
24 provide[d] ample basis for its conclusion that [the defendant's] motion was made for  
25 purposes of delay. *George*, 56 F.3d at 1084.

26 Habeas relief is not warranted on this claim because the state court reasonably  
27 determined that Horton's request for self-representation was a tactic for delay. First, his  
28 constant and obvious dissatisfaction with his appointed attorneys (resulting in 10 motions

1 to change counsel) shows that he could have made a *Faretta* request far earlier than he did.  
2 Second, although the waiver he signed stated that a continuance was unlikely to be  
3 granted, Horton admitted he would not be ready for trial on March 9 and he gave no  
4 indication about when he would be ready. Third, the frequent motions to change counsel  
5 indicate that Horton was attempting to delay the trial. Horton filed his *Faretta* motion  
6 after the trial court had denied his fourth motion to change one attorney (Rutledge), his  
7 third motion to change another (Liner) and another regarding another attorney (Lambros),  
8 which was granted. (Ans., Clerk's Transcript, Dkt. No. 22-3 at 123-124, 131, 133, 144,  
9 257, 286, 296; Dkt. No. 22-4 at 102, 104.) At the January 2015 *Faretta* hearing, the trial  
10 court, after hearing from Horton, determined that petitioner was "intending to use this  
11 [Faretta request] to delay this trial unnecessarily" and was using it to "manipulate the  
12 process of the court." (*Id.*, Dkt. No. 22-9 at 76.) On this record, the state court's rejection  
13 of Horton's *Faretta* claim was reasonable and is entitled to AEDPA deference. This claim  
14 is DENIED.

15 **ii. Admission of Propensity Evidence**

16 Horton claims that the trial court violated his due process right to a fair trial by  
17 admitting evidence of uncharged sex crimes against Jane Doe 2 and evidence of sex crimes  
18 he was convicted of committing against Jane Doe 3. (Pet., Dkt. No. 1 at 5.) At trial, Jane  
19 Doe 2 testified that in 1993 Horton raped her after she came to his house for dinner at his  
20 invitation. (Ans., State Appellate Opinion, Dkt. No. 22-16 at 133-134.) Jane Doe 3  
21 testified at trial that in 1996 Horton raped her after accepting his invitation to help him  
22 clean houses. (*Id.* at 134-135.)

23 Horton's due process claim was rejected on appeal. The appellate court concluded  
24 the evidence had been properly admitted under state law and did not create prejudice.  
25 (Ans., State Appellate Opinion, Dkt. No. 22-16 at 152-159.)

26 Horton's claim cannot succeed because no remediable constitutional violation  
27 occurred. The United States Supreme Court has left open the question of whether  
28 admission of propensity evidence violates due process. *Estelle v. McGuire*, 502 U.S. 62,

1 67-71 (1991). Based on the Supreme Court’s reservation of this issue as an “open  
2 question,” the Ninth Circuit has held that a petitioner’s due process right concerning the  
3 admission of propensity evidence is not clearly established as required by AEDPA.  
4 *Alberni v. McDaniel*, 458 F.3d 860, 866-67 (9th Cir. 2006). It has noted that courts have  
5 “routinely allowed propensity evidence in sex-offense cases, even while disallowing it in  
6 other criminal prosecutions.” *United States v. LeMay*, 260 F.3d 1018, 1025 (9th Cir.  
7 2001). And the Supreme Court “has not yet made a clear ruling that admission of  
8 irrelevant or overtly prejudicial evidence constitutes a due process violation sufficient to  
9 warrant issuance of the writ.” *Holley v. Yarborough*, 568 F.3d 1091, 1101 (9th Cir. 2009).

10 In sum, because the Supreme Court expressly has left open this question presented  
11 in the petition, Horton cannot show that a clearly established constitutional right was  
12 violated when the trial court admitted propensity evidence. The state court’s rejection of  
13 this claim was reasonable and is entitled to AEDPA deference. This claim is DENIED.

14 **iii. Terminating Cross-Examination**

15 Horton claims that the trial court violated his right to confrontation and due process  
16 by stopping the cross-examination of Jane regarding the nature of her relationship with  
17 Horton. (Pet., Dkt. No. 1 at 5.) The state appellate court summarized the facts:

18 The examination related to her ownership of a vehicle and whether she  
19 possessed a driver’s license during the time she was married. [¶] During  
20 cross-examination, Jane was asked about a Jeep Cherokee automobile she  
21 referred to in her direct examination. She testified that she ‘would drive it.’  
22 Defense counsel asked if she owned the vehicle, and, over the People’s  
23 relevance objection (which the court overruled), Jane responded that it was  
24 owned by another person. The court thereafter sustained the People’s  
25 relevance objections to defense counsel’s questions: (1) whether the owner  
26 was a person named Rangel; (2) whether it was true that the owner of the  
27 vehicle wanted it back at the time she possessed it; and (3) whether she had  
28 a driver’s license at the time she was driving the vehicle. After Jane’s  
testimony was completed, defense counsel stated for the record that because  
Jane had testified that [Horton] had taken her documents, ‘we felt it was  
relevant to be able to probe into whether or not she had a California driver’s  
license and that was part of the documentation that [Horton] kept.’ Defense  
counsel did not mention the inquiry as to ownership of the vehicle or whether

1 the owner had wanted to take back possession of the car. The court  
2 responded that it had ‘found that going any further into that line of  
3 questioning would not be relevant . . . to the issues before the Court and . . .  
4 jury.’

5 (Ans., State Appellate Opinion, Dkt. No. 22-16 at 174.) Horton contends that the cross-  
6 examination was in response to Jane’s direct testimony that he took her car keys, phone,  
7 and papers from her. Examination of this matter was important “to the exploration of the  
8 nature of his relationship with Jane before December 23, 2011.” (*Id.* at 174.)

9 This claim was rejected on appeal. First, the state appellate court saw as irrelevant  
10 the evidence that Jane did not valid driver’s license at the time she was married to Horton,  
11 and failed to see how such evidence related to the nature of the pair’s relationship. (Ans.,  
12 State Appellate Opinion, Dkt. No. 22-16 at 175-176.) Furthermore, “the speculative  
13 import” that Horton took her car keys because he didn’t want her driving without a valid  
14 license was refuted by Horton’s testimony that he never prevented Jane from having the  
15 car keys. (*Id.* at 176.) Also, Jane admitted during her cross-examination by defense  
16 counsel that she had told an investigator that Horton kept “[d]ocuments from my country,  
17 the counsel matricula and [her] driver’s license from that country.” (*Id.*) From this  
18 testimony, the jury could have inferred that Jane did not have a California’s driver’s  
19 license during her marriage and “therefore [Horton] never kept it from her.” (*Id.*)

20 “[T]he Confrontation Clause guarantees an opportunity for effective cross-  
21 examination, not cross-examination that is effective in whatever way, and to whatever  
22 extent, the defense might wish.” *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (per  
23 curiam). Accordingly, “trial judges retain wide latitude insofar as the Confrontation  
24 Clause is concerned to impose reasonable limits on such cross-examinations based on  
25 concerns about, among other things, harassment, prejudice, confusion of the issues, the  
26 witness’ safety, or interrogation that is repetitive or only marginally relevant.” *Delaware*  
27 *v. Van Arsdall*, 475 U.S. 673, 679 (1986). A court violates the “Confrontation Clause only  
28 when it prevents a defendant from examining a particular and relevant topic.” *Fenenbock*  
*v. Director of Corrections*, 692 F.3d 910, 919 (9th Cir. 2012). A defendant meets his

1 burden of showing a Confrontation Clause violation by showing that “[a] reasonable jury  
2 might have received a significantly different impression of [a witness’] credibility . . . had  
3 respondent’s counsel been permitted to pursue his proposed line of cross-examination.”  
4 *Van Arsdall*, 475 U.S. at 680; *Slovik v. Yates*, 556 F.3d 747, 753 (9th Cir. 2009). A due  
5 process violation occurs only if the excluded evidence had “persuasive assurances of  
6 trustworthiness” and was “critical” to the defense. *Chambers v. Mississippi*, 410 U.S. 284,  
7 302 (1973.)

8 Here, the state appellate court reasonably determined that the trial court’s limitation  
9 of cross-examination did not violate Horton’s Confrontation Clause or due process rights.  
10 First, the evidence was irrelevant concerning the nature of the relationship between Horton  
11 and Jane. Second, Horton’s own testimony contradicted his assertion that he took Jane’s  
12 car keys away from her. Third, Jane’s testimony allowed the jury to infer that she never  
13 had a California driver’s license during her marriage. Fourth, there was no showing that a  
14 reasonable jury would have had a “significantly different impression” of Jane’s credibility  
15 had counsel been allowed to continue his cross-examination. *Van Arsdall*, 475 U.S. at  
16 680. Fifth, there was no showing that the testimony Horton sought was “critical” to the  
17 defense. By ending cross-examination on an irrelevant and unimportant topic, the trial  
18 court was acting well within its discretion. *Id.* at 679. The state court’s rejection of  
19 Horton’s claims was reasonable and is entitled to AEDPA deference. This claim is  
20 DENIED.

21 **iv. Denying Discovery of a Police Report and Employment Records**

22 Horton claims that the trial court violated his due process right to a fair trial and his  
23 Confrontation Clause rights by denying disclosure of Jane’s prior report of rape (in 2010  
24 by someone other than Horton) in a Salinas Valley police report and her employment  
25 records. (Pet., Dkt. No. 1 at 7.) Defense counsel believed that Jane had had disciplinary  
26 action taken against her by her employer, and sought evidence to support this. His  
27 requests for both sets of records was denied. (Ans., State Appellate Opinion, Dkt. No. 22-  
28 16 at 177.)

1       The trial court reviewed the employment records and found nothing regarding  
2 reviews, layoffs, or any other relevant material. (*Id.* at 177-178.) It also reviewed the  
3 police report and concluded it was not relevant and that its disclosure was not likely to  
4 lead to any relevant evidence. (*Id.*) The appellate court also reviewed the documents and  
5 agreed with the trial court that the records contained nothing relevant. (*Id.* at 178.)

6       The United States Supreme Court “has never held that the Confrontation Clause  
7 entitles a criminal defendant to introduce extrinsic evidence for impeachment purposes.”  
8 *Nevada v. Jackson*, 569 U.S. 505, 512 (2013) (per curiam). “[T]he Confrontation Clause is  
9 generally satisfied when the defense is given a full and fair opportunity to . . . expose  
10 [testimonial] infirmities through cross-examination.” *Delaware v. Fensterer*, 474 U.S. 15,  
11 22 (1985). “[T]rial judges retain wide latitude insofar as the Confrontation Clause is  
12 concerned to impose reasonable limits on such cross-examinations based on concerns  
13 about, among other things, harassment, prejudice, confusion of the issues, the witness’  
14 safety, or interrogation that is repetitive or only marginally relevant.” *Van Arsdall*, 475  
15 U.S. at 679.

16       Habeas relief is not warranted on this claim. The trial and appellate courts reviewed  
17 both sets of records and held that they were not relevant. Such factual determinations are  
18 presumed correct. 28 U.S.C. § 2254(e)(1). Horton has not overcome this presumption of  
19 correctness and has not shown how his Confrontation Clause or due process rights were  
20 violated. And there is no clearly established right to have extrinsic evidence for  
21 impeachment purposes in any event. The state court’s rejection of these claims was  
22 reasonable and is entitled to AEDPA deference. This claim is DENIED.

23 **v., vi. Assistance of Counsel**

24       Horton raises two claims of ineffective assistance of counsel. In the first, he  
25 contends defense counsel should have impeached Jane and Jane’s friend Jasmin Deanda.  
26 In the second, Horton contends counsel should have objected to evidence that Horton had  
27 stalked and harassed Jane Doe 2.

28       In order to prevail on a claim of ineffectiveness of counsel, the petitioner must

1 establish two factors. First, he must establish that counsel's performance was deficient,  
2 i.e., that it fell below an "objective standard of reasonableness" under prevailing  
3 professional norms, *Strickland v. Washington*, 466 U.S. 668, 687-68 (1984), "not whether  
4 it deviated from best practices or most common custom," *Harrington v. Richter*, 562 U.S.  
5 86, 105 (2011) (citing *Strickland*, 466 U.S. at 690). "A court considering a claim of  
6 ineffective assistance must apply a 'strong presumption' that counsel's representation was  
7 within the 'wide range' of reasonable professional assistance." *Id.* at 104 (quoting  
8 *Strickland*, 466 U.S. at 689).

9 Second, he must establish that he was prejudiced by counsel's deficient  
10 performance, i.e., that "there is a reasonable probability that, but for counsel's  
11 unprofessional errors, the result of the proceeding would have been different." *Strickland*,  
12 466 U.S. at 694. A reasonable probability is a probability sufficient to undermine  
13 confidence in the outcome. *Id.* Where the defendant is challenging his conviction, the  
14 appropriate question is "whether there is a reasonable probability that, absent the errors,  
15 the factfinder would have had a reasonable doubt respecting guilt." *Id.* at 695. "The  
16 likelihood of a different result must be substantial, not just conceivable." *Richter*, 562  
17 U.S. at 112 (citing *Strickland*, 466 U.S. at 693).

18 Tactical decisions of trial counsel deserve deference when: (1) counsel in fact bases  
19 trial conduct on strategic considerations; (2) counsel makes an informed decision based  
20 upon investigation; and (3) the decision appears reasonable under the circumstances. *See*  
21 *Sanders v. Ratelle*, 21 F.3d 1446, 1456 (9th Cir. 1994). The investigation itself must be  
22 reasonable for an attorney's tactical decision based on that investigation to be reasonable.  
23 *Wiggins v. Smith*, 539 U.S. 510, 523-24 (2003) (tactical decision not to present life history  
24 as mitigating evidence in capital sentencing trial unreasonable where counsel failed to  
25 follow up on evidence that defendant had a miserable childhood). However, federal courts  
26 should not overlook the "wide latitude counsel must have in making tactical decisions";  
27 therefore, there are no "strict rules" for counsel's conduct "[b]eyond the general  
28 requirement of reasonableness." *Cullen v. Pinholster*, 563 U.S. 170, 194-96 (2011) ("No

1 particular set of detailed rules for counsel's conduct can satisfactorily take account of the  
2 variety of circumstances faced by defense counsel or the range of legitimate decisions'"')  
3 (quoting *Strickland*, 466 U.S. at 688-89).

4 AEDPA "erects a formidable barrier to federal habeas relief." *Burt v. Titlow*, 134 S.  
5 Ct. 10, 16 (2013). The barrier is even more formidable when seeking relief on an  
6 ineffective assistance claim. The standards created by *Strickland* and § 2254(d) are  
7 "highly deferential." *Strickland*, 466 U.S. at 689. When the two apply in tandem, review  
8 is "doubly deferential." *Knowles v. Mirzayance*, 556 U.S. 111, 123 (2009). When  
9 § 2254(d) applies, "the question is not whether counsel's actions were reasonable. The  
10 question is whether there is any reasonable argument that counsel satisfied *Strickland*'s  
11 deferential standard." *Richter*, 562 U.S. at 105.

12 **(a) Impeaching Deanda**

13 Horton claims that his trial counsel rendered ineffective assistance by failing to  
14 impeach Jane and her friend Jasmin Deanda with Deanda's prior inconsistent statements.  
15 (Pet., Dkt. No. 1 at 7.) The relevant facts, based on the state appellate court's summary,  
16 are as follows. Deanda testified at trial that she had been friends with Jane before and after  
17 her marriage to Horton. (Ans., State Appellate Opinion, Dkt. No. 22-16 at 129.) One time  
18 after the marriage, Deanda saw Jane crying on the sidewalk, and that she was wearing  
19 pajama pants and a long coat. (*Id.*) Jane told Deanda that Horton had taken her phone  
20 away, and that she was having problems in her marriage. (*Id.* at 129-130.) Jane said that  
21 Horton was aggressive when she did not obey him, and that there had been "physical  
22 contact." (*Id.*) Another time, when Deanda called Jane, Jane said "in a desperate manner"  
23 that she could not talk. (*Id.* at 130.) According to Deanda's testimony, Horton "was trying  
24 to perform oral sex on [Jane] . . . he wanted her to tell [Deanda] what he was doing to her."  
25 (*Id.*)

26 However, when Jasmin was interviewed by an investigator from the district  
27 attorney's office, Jorge Ramirez, she said that on the day she found Jane crying, Jane had  
28 said nothing to her about abuse. (Pet., Petition for Review to State Supreme Court, Dkt.

1 No. 1-2 at 39-41; Dkt. No. 1-3 at 1.) Horton believes that his defense counsel, Richard  
2 Rutledge, should have impeached Jane and Jasmin with this evidence. (*Id.*, Dkt. No. 1 at  
3 7.)

4 Rutledge declined to impeach for several reasons, which he made clear in a  
5 declaration.<sup>3</sup> First, examining Ramirez about Jasmin's interview would put before the jury  
6 additional evidence of Horton's abuse of Jane. (Ans., Rutledge Decl., Dkt. No. 22-18 at  
7 146.) Second, impeaching Jasmin about exactly when she heard about the abuse would  
8 have been pointless. It would not "portray Deanda as a liar or not credible, as I believed  
9 the prosecutor would likely argue that Deanda had simply been confused." (*Id.* at 147.)  
10 Third, Rutledge had found Ramirez a "difficult and 'slippery' witness to examine." (*Id.*)

11 The state appellate court found that no prejudice resulted from Jane's statements to  
12 Deanda about her marital problems. Jane herself had testified "in detail" that Horton had  
13 been "aggressive" and that "there had been physical contact." (Ans., State Appellate  
14 Opinion, Dkt. No. 22-16 at 173.) "Moreover, while [Horton] attaches heightened  
15 significance to the challenged evidence, we observe that the prosecutor did not even refer  
16 to this testimony by Jasmin in her arguments to the jury." (*Id.*)

17 Habeas relief is not warranted. First, there was no deficient performance: Rutledge  
18 made a reasonable tactical decision in declining to impeach Deanda. He thought that: the  
19 examination would add evidence to Jane's abuse claims, hurting his client; it would be  
20 pointless because the prosecutor would then contend Deanda was confused, rather than a  
21 liar; and from Rutledge's experience, Ramirez was a difficult witness to examine. Second,

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22  
23 <sup>3</sup> Horton's appellate counsel, Alexis Haller, submitted a declaration in which he recalls his  
24 discussion with Rutledge regarding why he did not impeach Deanda with her statements to  
25 Ramirez. (Pet., Dkt. No. 1-3 at 31-34.) Horton relies on Haller's declaration to support his  
26 claims. However, Haller's declaration does not change my conclusion. First, it is hearsay,  
27 and as such cannot be considered. Second, if I could consider it, it adds little. According  
28 to Haller's declaration, on one occasion Rutledge "could not recall any tactical or strategic  
reason for the omission." (*Id.* at 32.) On another occasion, Rutledge thought Ramirez's  
report left "a lot of gray area," Ramirez was a difficult witness, and it was best not to raise  
the issue of abuse again. (*Id.*) On another occasion, Rutledge gave the same reasons put  
forth above; Rutledge also added his theory that Horton had been bad in the past and was  
now a changed person, and that the documents did not hurt Horton. (*Id.* at 32-33.)

1 there was no prejudice, as the state appellate court concluded: Jane herself had testified to  
2 Horton's physical abuse and to his being aggressive. The state court's rejection of these  
3 claims was reasonable and is entitled to AEDPA deference. This claim is DENIED.

4 **(b) Objecting to Evidence of Stalking and Harassment**

5 Horton next contends that defense counsel rendered ineffective assistance when he  
6 failed to object to the admission of evidence that Horton had stalked and harassed Jane  
7 Doe 2, consequent to which she obtained a restraining order against him. (Pet., Dkt. No. 1  
8 at 7.) At trial, the prosecution presented documentary evidence that supported the  
9 restraining order. (Ans., State Appellate Opinion, Dkt. No. 22-16 at 159-160.)

10 Rutledge declined to object for two reasons, which he made clear in a declaration.<sup>4</sup>  
11 He did not believe that the documentary evidence "negatively affected one of our defense  
12 theories: that while Horton had committed bad acts in the past, he had taken responsibility  
13 for those acts." (Ans., Rutledge Decl., Dkt. No. 22-18 at 147-148.) He thought that this  
14 defense theory "made Horton's claim at trial that he did not commit the offenses against  
15 Jane Doe One more credible." (*Id.* at 148.) Also, Rutledge "believed the evidence of  
16 Horton's harassment of Jane Doe Two supported the defense position that Jane Doe Two  
17 was not raped by Horton." (*Id.*) This is because Jane Doe 2 "did not initially report the  
18 rape and only contacted police after Horton began to stalk and harass her." (*Id.*)

19 The state appellate court rejected the ineffective assistance claim because no  
20 prejudice resulted. "[W]hile the harassment/restraining order evidence placed [Horton] in  
21 a bad light relative to his alleged actions toward Doe 2, it was far less inflammatory than  
22 the properly admitted evidence that [Horton], after befriending Doe 2, gaining her trust,  
23 and assuring her that he would respect her desire that they have no physical relationship,

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<sup>4</sup> Horton's appellate counsel, Alexis Haller, submitted a declaration in which he recalls his  
26 discussion with Rutledge regarding why he did not object to the Jane Doe 2 evidence.  
27 (Pet., Dkt. No. 1-3 at 31-34.) Horton relies on Haller's declaration to support his claims.  
28 However, Haller's declaration does not change my conclusion. First, it is hearsay, and as  
such cannot be considered. Second, if I could consider it, it adds nothing new. (*Id.* at 32-  
33.)

1       forcibly raped her.” (Ans., State Appellate Opinion, Dkt. No. 22-16 at 169.) Also, the  
2       documentary evidence was “largely cumulative of Doe 2’s testimony (e.g., that [Horton]  
3       had raped her); “included statements favorable to [Horton]”; the prosecutor “made only  
4       minimal reference to harassment/restraining order evidence in her argument to the jury”;  
5       and that there were no juror questions “suggested the jury placed any significance” on  
6       Horton’s stalking of Jane Doe 2, “causing her to obtain a restraining order.” Furthermore,  
7       Jane Doe 1 presented “strong and direct evidence that [Horton] committed the charged  
8       offenses,” evidence that was corroborated by others. (*Id.* at 168.)

9           Habeas relief is not warranted. Rutledge had a reasonable tactical basis for  
10       declining to object, so there was no deficient performance. *Richter*, 562 at 105 (“The  
11       question is whether there is any reasonable argument that counsel satisfied *Strickland*’s  
12       deferential standard.”) The state appellate court’s determination that there was no  
13       prejudice was also reasonable. The evidence was cumulative of and less inflammatory  
14       than testimony that had already been introduced. Furthermore, Jane Doe 1 presented  
15       strong, corroborated evidence. The state court’s rejection of these claims was reasonable  
16       and is entitled to AEDPA deference. This claim is DENIED.

17       **v.       Cumulative Error**

18       Horton claims there was cumulative error. The state appellate court rejected this  
19       claim:

20       [Horton] contends further that reversal is required due to cumulative error.  
21       We have concluded there is one nonprejudicial error concerning the  
22       admission of Jane’s statements through the testimony of Jasmin.<sup>5</sup> There are  
23       thus no multiple errors to cumulate. In addressing the challenge to admission  
24       of the harassment/restraining order evidence, we have assumed without  
25       deciding that counsel’s performance was deficient in failing to object to this  
26       evidence, but have concluded there was no ineffective assistance of counsel  
27       that was prejudicial. This assumed error, together with the nonprejudicial  
28       error concerning the admission of Jane’s statements through Jasmin’s

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<sup>5</sup> On appeal, Horton contended Jasmin Deanda’s statements were improperly admitted hearsay, a claim the appellate court rejected and which Horton does not make in his federal habeas petition. (Ans., State Appellate Opinion, Dkt. No. 22-16 at 49-52.)

testimony, does not warrant reversal. Considered separately or together, we find ‘no serious flaw’ in the judgment, and ‘[o]ur careful review of the record persuades us that the trial was fundamentally fair and its determination reliable.’ (*People v. Millwee* (1998) 18 Cal.4th 96, 168.)

In some cases, although no single trial error is sufficiently prejudicial to warrant reversal, the cumulative effect of several errors may still prejudice a defendant so much that his conviction must be overturned. *See Alcala v. Woodford*, 334 F.3d 862, 893-95 (9th Cir. 2003). Where there is no single constitutional error existing, nothing can accumulate to the level of a constitutional violation. *See Mancuso v. Olivarez*, 292 F.3d 939, 957 (9th Cir. 2002) (overruled on other grounds).

There has been no showing that the combined effect of alleged errors “so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Donnelly v. DeChristoforo*, 416 U.S. 637, 643 (1974). The state court’s rejection of this claim was reasonable and is therefore entitled to AEDPA deference. This claim is DENIED.

## CONCLUSION

The state court's adjudication of Horton's claims did not result in decisions that were contrary to, or involved an unreasonable application of, clearly established federal law, nor did they result in decisions that were based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding. Accordingly, the petition is DENIED.

A certificate of appealability will not issue. Reasonable jurists would not “find the district court’s assessment of the constitutional claims debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Horton may seek a certificate of appealability from the Ninth Circuit.

Horton's motions inquiring about the status of his traverse are GRANTED. (Dkt. Nos. 35 and 37.) The traverse is deemed timely filed.

The Clerk shall terminate all pending motions, enter judgment in favor of

1 respondent, and close the file.

2 **IT IS SO ORDERED.**

3 **Dated:** June 14, 2021

4   
5 WILLIAM H. ORRICK  
6 United States District Judge

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United States District Court  
Northern District of California